APPENDIX

IN THE SUPREME COURT OF FLORIDA

January Term A.D. 1971

Thursday, January 14, A.D. 1971

Case No. 40,140

FLOYD CHANEY, *Petitioner*

v.

STATE OF FLORIDA, *Respondent*

On consideration of the Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A True Copy,

Test:

SID J. WHITE
Sid J. White
Clerk Supreme Court

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1970

Monday, November 30, 1970

Case No. 40,140

FLOYD CHANEY, *Petitioner,*

v.

STATE OF FLORIDA, *Respondent.*

District Court of Appeal, *Fourth* District

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ERVIN, C. J., ROBERTS, DREW, ADKINS and BOYD, JJ, concur.

A True Copy

Test:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

cc: Hon. Evelyn R. Flack, Clerk
Hon. John B. Dunkle, Clerk
Hon. Russell H. McIntosh, Judge
Hon. Frederick W. Daily, III
Hon. Earl Faircloth, Tallahassee
Hon. Earl Faircloth, West Palm Beach

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

January Term, 1970

Case No. 69-215.

FLOYD CHANEY, *Appellant,*

v.

STATE OF FLORIDA, *Appellee.*

Opinion filed June 19, 1970.

Appeal from the Criminal Court of Record for Palm Beach County; Russell H. McIntosh, Judge.

Frederick W. Daily, III, of Ives & Davis, West Palm Beach, for appellant.

Earl Faircloth, Attorney General, Tallahassee, and J. Terrell Williams, Assistant Attorney General, West Palm Beach, for appellee.

REED, J.

The defendant appeals from a conviction in the Criminal Court of Record for Palm Beach County, Florida. The primary issue is whether or not the trial court erred in overruling defendant's pretrial motion to suppress certain tangible objects taken from his vehicle shortly after his arrest.

At the time the defendant was arrested, according to defendant's testimony, the arresting officer told the defendant that he was under arrest for "breaking and entering a telephone". Defendant argues that this was a misdemeanor under Section 822. 10, F.S. 1965, and, since it was not committed in the officer's presence, the arrest with-

out a warrant was invalid. The arrest being invalid, it could not have provided according to defendant a predicate for the incidental search which yielded the objects the defendant sought to suppress.

An arrest without a warrant could be made under Section 901.15(3), F.S. 1965:

> "When [the arresting officer] . . . has reasonable ground to believe that a felony has been . . . committed and reasonable ground to believe that the person to be arrested has committed . . . it."

This statute provides a standard that conforms to the constitutional requirements of the Fourth Amendment to the United States Constitution and Section 22 of the Declaration of Rights of the Florida Constitution of 1885 (now Section 12 of the Declaration of Rights of the Revised Constitution). Whether or not the arresting officer had a reasonable ground to believe that a felony had been committed and that the person to be arrested was the one who had committed the felony is a mixed question of law and fact which must be decided by the court, when this issue is presented in connection with a motion to suppress or by objection to items offered in evidence. The jury plays no part in the resolution of the issue. Urso v. State, Fla. App. 1961, 134 So.2d 810; Brown v. State, Fla. 1950, 46 So.2d 479. Since this issue is exclusively for decision by the trial judge, the judge has the responsibility of weighing the evidence and determining matters of credibility. It follows that his ruling should not be reversed on appeal where supported by competent substantial evidence. Compare Graham v. State, Fla. 1956, 91 So.2d 662, 663, wherein the role of the trial judge in passing on the admissibility of a confession is discussed.

In determining whether or not the arresting officer had a reasonable ground for his arrest, the standard to be employed by the trial judge is the standard of conduct which would have been employed by a reasonable man in the

position of the arresting officer at the time of the arrest acting with the knowledge which at that time was possessed by the arresting officer. State v. Outten, Fla. 1968, 206 So. 2d 392, 397; Henry v. U. S., 1959, 361 U.S. 98, 80 S.Ct. 168, 171, 4 L.Ed.2d 134. If a reasonable man in that position would have concluded that he had reasonable grounds to believe that the defendant had committed a felony, the arrest without a warrant was authorized by Section 901.15 (3), F. S. 1965.

The validity of an arrest does not turn on the label given the arrest by the arresting officer. Even though the arresting officer may have labeled the cause for the arrest a misdemeanor, such will not invalidate an arrest where the facts, when measured by the standard mentioned above, provided reasonable grounds for the arrest without a warrant under the pertinent statute. Bell v. U. S., D.C. Cir. 1957, 254 F.2d 82, 86 (cert. den. 358 U.S. 885, 79 S.Ct. 126, 3 L.Ed. 113); Simms v. State, Mr. App. 1968, 242 A.2d 185, 189; Hoskins v. State, Fla. App. 1968, 208 So.2d 145. Any other rule would be an unjustified preference of form over substance.

It is a well established principle in Florida that an arrest is not complete until it has been communicated to the person to be arrested. The arrest of Chaney, therefore, did not occur until Chaney was returned to the telephone station and the arrest was announced to him by the arresting officers. Chance v. State, Fla. App. 1967, 202 So.2d 825; Lowe v. State, Fla. App. 1966, 191 So.2d 303. At the time of the arrest, the arresting officers had been advised by two purported eye witnesses that the defendant had carried off a coin box from the public telephone which was hanging on a wall outside a store. He had left in a truck. The arresting officers knew from their personal activities that the defendant was apprehended shortly after he had allegedly been seen committing the theft. When the arresting officers returned to the scene of the theft, they personally determined that the coin box was missing from

the telephone and the two purported eye witnesses identified the defendant as one of the men whom they had allegedly seen departing with the coin box. A reasonable man possessed of this knowledge would surely have concluded that the defendant Chaney had removed the coin box from the public telephone and that he was or had been possessed of burglarious tools designed and intended for that purpose. Measured by the reasonable man test, the arrest without a warrant was valid for the felony of possession of burglarious tools. Since the arrest was valid, the incidental search was also valid and the tools discovered in the course of the search were admissible in evidence. The trial court correctly ruled on this point by denying the motion to suppress.

We have reivewed the other point raised by the defendant and do not consider it to have merit or require discussion.

The judgment and sentence appealed from are affirmed.

AFFIRMED.

McCAIN and OWEN, JJ., concur.

IN THE CRIMINAL COURT OF RECORD, IN AND FOR PALM BEACH COUNTY, STATE OF FLORIDA

Case No. 66 C 2750

STATE OF FLORIDA

v.

FLOYD CHANEY, *Defendant.*

Motion To Suppress

Comes now the defendant, FLOYD CHANEY, by his undersigned attorneys, and pursuant to Rule 1.190 (h) (1), Florida Rules of Criminal Procedure, respectfully moves this court to suppress as evidence in this cause all tangible items of property and other evidence seized by the police

from the defendant, his automobile or his premises, and as grounds therefor says:

1. Said search and seizure was made without the benefit of a search warrant.

2. No crime was being committed in the presence of the arresting officer at the time of the search of defendant's person and automobile.

3. Such search of the defendant's person and automobile was not made for the purpose of making effective a lawful arrest in that the arrest was made as a result of the search.

4. To sustain such search and seizure would be to deprive this defendant of his rights guaranteed to him under the Constitution of the United States and of the State of Florida.

IVES & DAVIS
712 Citizens Building
West Palm Beach, Florida
Attorneys for Defendant Chaney

By_____
GARLON A. DAVIS

Testimony of Robert Walton, Deputy Sheriff on Direct Examination at Motion To Suppress Hearing

Beginning page 23, line 19:

A. "I received a call. I think it was about 5:00 o'clock. It was two men in a blue Ford pickup truck that were believed to have burglarized a telephone box on Lantana Road. They were seen heading west on Lantana Road.

Q. Were any numbers given?

A. There was 3GK given with some more numbers. I don't remember them now.

Q. Did you have occasion to run across a vehicle that night?

A. Yes, sir.

Q. Was a description given to you about the oldness and youngness of the man?

A. It stated two white males.

Q. Were the ages given or was one said to be older and the other younger?

A. I don't believe so.

Q. Did you have an occasion to see a blue Ford pickup truck?

A. Yes, sir.

Q. About how long was it after you received the call?

A. Approximately five to seven minutes.

Q. Where did you see this pickup truck?

A. I went out Forest Hill Boulevard. I turned left on State Road 7. That is heading south about a quarter of a mile or so, off of Forest Hill Boulevard.

Q. How far would that be from Lantana Road?

A. A good five miles, maybe more.

Q. Did this license tag on this Ford pickup truck that you saw, did that match the license tag you received over the telephone?

A. Over the radio?

Q. Over the radio.

A. They said it was a 3 GK. A truck fitting that description passed me. I saw two white males in it. It was

a blue Ford pickup truck. I spun around and got behind them. It was 8GK, something.—

Q. Did it—

A. I figure it was a 3 and an 8—something like that.

Q. Did the last four numbers match?

A. They were similar.

Q. Did you have an occasion to stop that car?

A. Yes, sir.

Q. At the time you stopped it, what happened?

A. I approached the vehicle. There were two white males sitting in it. I believe the taller man was driving the truck.

Q. Did you see him in here today?

A. This is the man right here. (indicating).

Q. What happened then?

A. I asked them if they would just come up to Lantana Road, down State Road 7—

Q. They said yes?

A. I asked them if they had stopped to make a a telephone call some place. They said yes. They were calling a girl up in Daytona Beach or somewhere in there.

Q. Did you ask them to go back there?

A. Yes, sir.

Q. At this time and at that point, would you allow them to leave?

A. No, sir.

Q. Did you have an occasion—what did you do when you got back? Did you talk to Joe Fraizer when you got back?

A. I talked to Mr. Fraizer and Willie Lockhart.

Q. Now, at this time, they would not have been allowed to leave, is that correct?

A. No, sir.

Q. What did you do then? Who was with you? Was there another officer?

A. Deputy Sheriff Monroe came up after I stopped the vehicle.

Q. He followed you back to the scene?

A. Yes."

Ending page 26, line 20.

Beginning page 27, line 4:

Q. At this time, had you gone into the truck?

A. No, sir.

Q. Did you have an occasion to see anything on the dashboard before Deputy Sheriff Monroe removed—

A. I believe there was a very few small lock picks.

Q. On the dashboard of the vehicle?

A. Yes, sir.

Q. And could these be seen in plain view from outside the vehicle?

A. No, I think you had to look into the window like this (indicating).

Ending page 27, line 14.

Beginning page 34, line 3:

Q. What time do you claim you placed him under arrest?

A. I placed him under arrest at the labor camp, at about thirty minutes or so after the original stopping on State Road 7.

Ending page 34, line 6.

Testimony of Joel Monroe, Deputy Sheriff on Direct Examination at Trial

Beginning page 76, line 15:

Q. Did you have an occasion to stop a Ford pick-up truck along with Deputy Sheriff Walton or at least come up on him after he was stopped?

A. I came up after the truck was stopped.

Q. Would you tell the members of the Jury exactly what you observed at the time you came up?

A. At the time I arrived at the pick-up truck, the subject later identified as Mr. Chaney was walking back towards the pick-up truck to meet Deputy Sheriff Walton.

Q. Do you see Mr. Chaney in the Courtroom?

A. Yes, this gentlemen here, (indicating).

Q. Describe the color tie he is wearing?

A. A metallic blue.

Q. What time was it when you saw Mr. Chaney get out?

A. Shortly after 5:00 o'clock in the afternoon.

Q. It was still light out?

A. Yes, it was.

Q. What occurred then?

A. I approached Mr. Chaney and asked him what was the trouble at the telephone booth. I didn't mention what telephone booth. He said he was trying to call his sister somewhere in Daytona, I believe it was. I asked Mr. Chaney if he would go back to the telephone booth and straighten the problem out. At this time he got back in his truck and turned the truck around and headed south. I followed him.

Q. You didn't tell him which telephone?

A. No, I didn't.

A. He went to a Labor Camp on Lantana Road, the Lee Brother's Camp.

Q. The Lee Brother's Camp?

A. Yes.

Q. What happened at the Lee Brother's Camp?

A. At the Lee Brother's Camp we received a message that a telephone booth there had been entered. And that these particular men were suspect in this Breaking and Entering. And so when I got to the Labor Camp I found three subjects that said they saw these men at the telephone booth. I then tried to get hold of a telephone man to check the booth to see if it had been entered. And I later took a probe, a match stick and pushed it up the drain hole of the telephone box and found that the money box was missing.

Q. Where is the money box located?

A. It is located at the base of the telephone.

Q. Were you instructed by someone on what to do?

A. Yes, after we contacted the office, one of the security agents there—

Q. What did you discover when you did this? Was the money box in there or wasn't it?

A. The money box was missing.

Q. Was the door on the money box, on the front of the telephone, was that a locked door?

A. Yes, the telephone was intact completely with the door in front.

Q. After you discovered the money box missing, what did you do?

A. I placed the subjects under arrest for Breaking and Entering of the telephone booth.

Ending page 79, line 1.